

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: PROCESSED EGG PRODUCTS	:	
ANTITRUST LITIGATION	:	MDL No. 2002
_____	:	08-md-02002
	:	
THIS DOCUMENT APPLIES TO:	:	
All Direct Purchaser Actions	:	

**DEFENDANT SPARBOE FARM, INC.'S MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT
BETWEEN PLAINTIFFS AND SPARBOE FARMS, INC.**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Defendant Sparboe Farms, Inc. ("Sparboe") moves the Court to preliminarily approve the settlement between Plaintiff Class Representatives ("Plaintiffs") and Sparboe on the terms and conditions set forth in the Settlement Agreement Between Plaintiffs and Sparboe Farms, Inc. ("Settlement" or "Settlement Agreement"), submitted concurrently herewith.

This motion is based on the Memorandum of Law in Support and Declaration of Troy J. Hutchinson, submitted herewith, and made on the following grounds:

- The Settlement falls within the range of possible approval and is "sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard," the legal standard for preliminary approval of a class action settlement. *See In re Auto. Refinishing Paint Antitrust Litig.*, 2004 WL 1068807, at *1 (E.D.Pa. May 11, 2004) [citation omitted].
- The Settlement is the result of over four months of extensive arm's-length negotiations by experienced antitrust and class action lawyers. *See In re Auto. Refinishing Paint Antitrust Litig.*, 2004 WL 1068807 at *1 [citations omitted]; *Thomas v. NCO Financial Sys.*, 2002 WL 1773035 at *5 (E.D. Pa. July 31, 2002).
- The expense and uncertainty of continued litigation against Sparboe and the likelihood of appeal militates strongly in favor of approval. *See In re Linerboard Antitrust Litig.*, 292 F.Supp.2d 631, 638 (E.D. Pa. 2003); *See In re Reneron End-Payor Antitrust Litig.*, 2005 WL 2230314 at *17 (D.N.J. Sept. 13, 2005). This is particularly true given the Supreme Court's ruling in *Bell Atlantic Corp v. Twombly*, 550 U.S. 544, 558 (2007) and the Defendants' motions to dismiss Plaintiffs' Consolidated Amended Class Action Complaint on the basis that the Complaint lacks any specificity as to each

Defendant. In fact, Class Counsel only agreed to settle after being served with Defendants' motions to dismiss.

- The uncertainty with respect to Sparboe is even greater because Sparboe maintains that it has jurisdictional and venue defenses to Plaintiffs' claims, including that this Court lacks personal jurisdiction over Sparboe, a defense that Sparboe retains and does not waive by filing this Motion or by entering into the Settlement Agreement to avoid the cost of litigation.

- Because Plaintiffs' Complaint may not survive the current motions to dismiss based on the lack of specificity in the current Complaint, Plaintiffs' Counsel apparently believes that *if* there is any merit to their claims against any Defendant, then evidence of any such alleged conspiracy may exist in Sparboe's documents or in the testimony of Sparboe employees, and that if Plaintiffs' Counsel has access to Sparboe's documents and witnesses, then Plaintiffs can amend the current Complaint and perhaps survive Defendants' *Twombly* motions. Thus, Plaintiffs' Counsel apparently have concluded that if there is any hope to their claims surviving the motions to dismiss, the Settlement Agreement may assist in pursuing the claims against the other Defendants. *See In re Ikon Office Supplies Inc. Securities Litig.*, 194 F.R.D. 166 (E.D. Pa. 2000).

WHEREFORE, Plaintiffs respectfully request that the Court grant the motion and enter the Proposed Order Preliminarily Approving Class Action Settlement.

Dated: June 28, 2009

s/ Troy J. Hutchinson

Eric A. Bartsch (MN Atty. ID #243723)

Troy J. Hutchinson (MN Atty. ID #320420)

Admitted *Pro Hac Vice*

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